

*U.S. Patent Application Serial No. 10/535,193
Reply to Office Action dated December 11, 2007*

REMARKS

New claim 8 is supported in the paragraph spanning pages 18/19 of the specification.. It is patentable by its dependence from allowable claim 1 and for the reasons below.

Claim 1 is amended to include the subject matter of claim 7, which is canceled without prejudice. Other claims are formally amended. In response to the outstanding Office Action:

[1-2] Claims 1, 4, and 7 are rejected under 35 U.S.C. §103(a) as being obvious over Martin Boys, US 2006/0114890, in view of Donaldson et al, US 7,272,232. This rejection is respectfully traversed.

Claim 1 recites: mode switching to the telephone mode from an un-paid radio broadcast (but not switching from a paid radio broadcast); and disabling interruption when the broadcast is paid. The Examiner relies on Martin Boys for disclosing the Internet telephone/radio, and on Donaldson for teaching prioritizing of multiple audio sources.

The Examiner is invited to consider the following arguments:

(1) Martin Boys discloses a physical switch for the user to “toggle” between radio and telephone (paragraphs 0108-0109). All mode determinations are made by the user, and no determination is made otherwise. It is noted that all of the Martin Boys procedures start with a *user* determination (“User activates radio ...,” 107 in Fig. 5, and 1001 in Fig. 10; “User activates directory button ...,” 117 in Fig. 6; “User activates radio ...,” 107 in Fig. 5) and there is much additional button-pushing (111 in Fig. 5, 125 and 127 in Fig. 6, and 1003, 1004, 1005, 1006, and 1007 in Fig. 10). “User selection” is recited in Martin-Boys’ independent claim 1, and “one-touch initiation” is recited in the other independent claim, claim 10.

Martin-Boys thus does not disclose any prioritizing, only mechanical switches for the user. The presence of *pay content* is not determined, either by the user or automatically.

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Donaldson likewise fails to teach or suggest a determination of whether or not the content is pay content. Donaldson only distinguishes between radio and telephone (e.g., Abstract lines 9-13; col. 2, lines 63-67), and the rejection itself asserts no more than this. The Examiner writes (bottom of page 2), "it would have been obvious ... to select any of the plurality or audio sources, such as internet radio, as having priority over ... IP telephone call." There is no assertion that Donaldson disclose prioritizing on the basis of the claimed *pay content*.

Because neither of the references discloses discriminating paid from non-paid Internet radio, no combination (not admitted obvious) could reach the instant claims.

(2) Donaldson generally teaches *combining* two audio sources, with one at a higher volume than the other. Donaldson teaches giving priority to an alarm sound over a continuous sound, and, more specifically, teaches giving priority to a telephone ring over a radio broadcast. See, e.g., Donaldson's Abstract, lines 9-14; col. 2, line 63 to col. 3, line 4; and col. 6, lines 12-24 and 39-59.

This teaching is *opposite* to what claim 1 recites, in the case where the music is paid for.

(3) Donaldson also discloses one instance of radio having a higher priority than a telephone ring, in the text starting at col. 6, line 60. This text describes Fig. 4, which shows loudness settings. Donaldson states that when "mixer input A (radio program) now has higher priority, the level [of A] is unchanged when the audio source B (telephone ring) becomes active, and the ring level is set at a level below the radio program." Here Donaldson again teaches that a telephone call *should* interrupt a radio broadcast (although at lower volume), even when the radio broadcast is given priority.

Martin Boys also fails to disclose this aspect of the Applicants' apparatus. Therefore, no combination (not admitted) could reach the instant claims.

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(4) The references are seen to teach oppositely, one using user-whim switches and the other apparatus channel priority determination, which are incompatible. The asserted combination therefore is respectfully submitted to lack expectation of success, as well as suggestion to combine.

[3] Claim 2 is rejected under 35 U.S.C. §103(a) as being obvious over Martin Boys and Donaldson in view of Van Bosch, US 2004/0204159. This is traversed, *inter alia*, on dependence.

[4] Claims 3, 5, and 6 are rejected under 35 U.S.C. §103(a) as being obvious over Martin Boys and Donaldson in view of Kaufman, US 6,654,367. This is traversed, *inter alia*, on dependence.

In view of the aforementioned amendments and accompanying remarks, the application is submitted to be in condition for allowance. The Examiner is invited to contact the undersigned attorney at the telephone number indicated below to discuss this case.

Respectfully submitted,

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I hereby certify that this correspondence is being facsimile transmitted to the Patent and Trademark Office (Fax No. (571-273-8300) on March 5, 2008.

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Signature *Nick Bromer*